**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held July 24, 2014

Commissioners Present:

 Robert F. Powelson, Chairman

 John F. Coleman, Jr., Vice Chairman, Statement

 James H. Cawley, Statement

 Pamela A. Witmer, Concurring in result only

 Gladys M. Brown

Petition of the Bureau of Investigation and

Enforcement of the Pennsylvania Public Utility

Commission for an Interim Emergency Order

requiring Uber Technologies, Inc. to immediately P-2014-2426846

cease and desist from brokering transportation

service for compensation between points within

the Commonwealth of Pennsylvania

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the *Order Granting Interim Emergency Relief and Certifying Material Question* (*July 1st Order*) issued by Administrative Law Judges (ALJs) Mary D. Long and Jeffrey A. Watson on July 1, 2014, in the above-captioned proceeding. As authorized by the Commission’s Regulations governing the interlocutory review of a material question submitted by a presiding officer, 52 Pa. Code § 5.305, the Bureau of Investigation and Enforcement (I&E or Complainant) and Uber Technologies, Inc. (Uber or Respondent) each filed a Brief on Material Question addressing the merits of the material question on July 8, 2014.

The material question certified to the Commission by the ALJs is whether I&E has met the requirements for obtaining interim emergency relief set forth at 52 Pa. Code § 3.6(b). For the reasons stated herein, we determine that I&E has met the requirements for obtaining interim emergency relief. Therefore, we answer the material question in the affirmative.

**I. History of the Proceeding**

On June 5, 2014, I&E filed a Formal Complaint (Complaint) against Uber, alleging that the Respondent provides internet and mobile application software (Uber app) connecting passengers with individuals who have registered with Uber as drivers.[[1]](#footnote-1) According to the Complaint, the Uber app permits a passenger’s phone to locate the nearest available Uber driver, and then alerts the Uber driver of the ride request. Complaint at 1.

I&E alleged that Uber drivers use their personal vehicles to respond to ride requests and that, through the use of the Uber app, the Respondent is acting as a broker of transportation in Pennsylvania without proper Commission authority.[[2]](#footnote-2) I&E averred that brokers of transportation must obtain a Commission-issued brokerage license before engaging in the business of being a broker, and that Uber does not hold a brokerage license. Complaint at 1-2.

In addition, I&E alleged that, on July 6, 2012, the Commission’s Bureau of Technical Utility Services issued a letter to the Respondent directing Uber to cease and desist from acting as a broker of transportation service without the authority to provide the service. I&E also averred that, on March 13, 2014, the Respondent announced the launch of UberX, a ride-sharing passenger transportation service in Pittsburgh connecting passengers with Uber drivers via the Uber app. *Id.*

According to the Complaint, I&E’s Motor Carrier Enforcement Manager Charles Bowser (Officer Bowser) downloaded the Uber app to a mobile phone and requested passenger transportation in Pittsburgh on eleven separate occasions between March 31, 2014, and April 21, 2014. Uber drivers transported Officer Bowser using their personal vehicles and charged fares ranging from $5 to $8. In its Complaint, I&E averred that the Uber drivers responding to Officer Bowser’s requests provided transportation without proper Commission authority to transport persons for compensation within Pennsylvania. Additionally, I&E alleged that Uber violated Section 1101 of the Public Utility Code (Code), 66 Pa. C.S. § 1101, by offering to broker transportation of persons for compensation without authority when it announced the launch of its ride-sharing program and initiated the Uber app. Complaint at 2-3.

For the allegations related to the offering of broker transportation without authority and the initiation of the Uber app, I&E proposed a civil penalty of $84,000. I&E requested an additional civil penalty of $11,000 for the eleven trips in which Uber allegedly brokered transportation for compensation without authority to do so. *Id.* at 3.

On June 16, 2014, I&E filed a Petition for Interim Emergency Order (Petition) that sought a Commission Order requiring Uber to immediately cease and desist from brokering transportation service for compensation between points within Pennsylvania. In its Petition, I&E incorporated the averments of its Complaint and contended that, pursuant to 52 Pa. Code § 3.6, it is entitled to emergency relief.

I&E asserted that the need for relief is immediate and ongoing as it has attempted, without success, to stop Uber from unlawfully brokering transportation services using non-certificated drivers. Additionally, I&E alleged that injury would be irreparable if relief is not granted and that, by using uncertificated drivers, Uber has unilaterally deprived the Commission of its obligation to ensure driver integrity, vehicle safety and the maintenance of sufficient insurance coverage. Further, I&E asserted that the Commission cannot be certain that its regulations pertaining to driver safety are being met because Uber drivers are not certificated motor carriers. Additionally, I&E contended that the Commission cannot verify that vehicles of the Uber drivers comply with its vehicle safety requirements, which include equipment standards and compliance with inspection requirements of the Pennsylvania Department of Transportation and the Commission and evidence of insurance coverage. Petition at 8-12.

Lastly, I&E averred that its requested relief is not injurious to the public interest because Uber has no lawful right to broker transportation for compensation. Until Uber becomes licensed and its drivers certificated, I&E argued it will be unable to guarantee that Uber is brokering transportation using drivers who adhere to the Commission’s safety and insurance regulations, which were designed to safeguard the public. *Id.* at 12.

On June 23, 2014, Uber filed an Answer to I&E’s Petition (Answer) averring that it is not a broker, but rather a software company that licenses a smartphone application. According to Uber, it licenses its application to Gegen, LLC (Gegen), a company which received approval to operate as a broker to arrange for transportation of persons between points in Pennsylvania.[[3]](#footnote-3) Uber argued, in part, that if I&E’s Petition is granted, the Commission would be ordering a software company to cease operating without a comprehensive review of whether any activities violate the Code. Answer at 2, 11.

On June 26, 2014, Uber filed an Answer to the Complaint admitting that Uber licenses an Internet and mobile software application connecting passengers and drivers but denied that the drivers are “Uber drivers.” In addition, Uber admitted to not holding a Commission-issued broker license. However, the Respondent averred that it has not brokered transportation in Pennsylvania and requested the dismissal of the Complaint with prejudice. Answer to the Complaint at 1-3.

 In accordance with 52 Pa. Code § 3.6a, which requires a hearing to be held within ten days of the filing of a petition for interim emergency relief, a hearing on the Petition was held before ALJs Long and Watson on June 26, 2014. I&E presented the testimony of one witness and sponsored three exhibits. The first exhibit, a certification from the Secretary of the Commission dated June 24, 2014, certifying that Uber does not hold a certificate of public convenience to operate as a motor carrier of passengers and has not been issued a license to broker transportation in Pennsylvania, was admitted into the record. The second exhibit, a twenty-nine page document consisting of email communications and receipts for payment between Uber and Officer Bowser, was also admitted into the record. However, only the first two pages of the third exhibit, consisting of a news release from the Commonwealth of Pennsylvania and a press release related to Uber, were admitted into the record.

 Uber was represented by counsel, but did not present any witnesses or exhibits.

 On July 1, 2014, ALJs Long and Watson issued the *July 1st Order* granting I&E’s Petition, and certifying the granting of relief by interim emergency order to the Commission as a material question, in accordance with 52 Pa. Code § 3.10(b). The ALJs determined that I&E demonstrated the requisite need to order Uber to immediately cease and desist from utilizing its digital platform to facilitate transportation for compensation to passengers using non-certificated drivers in their personal vehicles within Pennsylvania. *July 1st Order* at 6.[[4]](#footnote-4) As stated above, on July 8, 2014, I&E and Uber each filed a Brief on Material Question (Brief) addressing the merits of the material question pursuant to 52 Pa. Code § 5.305.

**II. Discussion**

We note that any issue we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the Parties. [Consolidated Rail Corporation v. Pa. PUC*,* 625 A.2d 741 (Pa. Cmwlth. 1993)*;*](file:///C%3A%5CDocuments%20and%20Settings%5Ctfarrar%5CLocal%20Settings%5CTemporary%20Internet%20Files%5CContent.Outlook%5CLocal%20Settings%5CTemporary%20Internet%20Files%5CContent.Outlook%5CLocal%20Settings%5CTemporary%20Internet%20Files%5CContent.Outlook%5CLocal%20Settings%5Cresearch%5CbuttonTFLink) *also* see, generally, [University of Pennsylvania v. Pa. PUC*,* 485 A.2d 1217 (Pa. Cmwlth. 1984).](file:///C%3A%5CDocuments%20and%20Settings%5Ctfarrar%5CLocal%20Settings%5CTemporary%20Internet%20Files%5CContent.Outlook%5CLocal%20Settings%5CTemporary%20Internet%20Files%5CContent.Outlook%5CLocal%20Settings%5CTemporary%20Internet%20Files%5CContent.Outlook%5CLocal%20Settings%5Cresearch%5CbuttonTFLink)

**A. Legal Standards Governing Emergency Relief**

 The purpose of an interim emergency order is to grant or deny injunctive relief during the pendency of a proceeding. 52 Pa. Code § 3.1. The standards that govern the issuance of interim emergency orders are set forth at 52 Pa. Code § 3.6. Section 3.6 requires that a petition for interim emergency relief be supported by a verified statement of facts that establishes the existence of the need for emergency relief, including facts to support the following:

(1) The petitioner’s right to relief is clear.

(2) The need for relief is immediate.

(3) The injury would be irreparable if relief is not granted.

(4) The relief requested is not injurious to the public interest.

52 Pa. Code § 3.6(b).

 The Commission may grant interim emergency relief only when all of the foregoing elements exist. *Glade Park East Home Owners Association v. Pa. PUC*, 628 A.2d 468, 473 (Pa. Cmwlth. 1993).

As to the first element, the Commission has determined that it is not necessary to determine the merits of a controversy in order to find that a petitioner’s right to relief is clear; rather, the basis for determining whether this standard has been met is whether a petitioner has raised “substantial legal questions.” *Core Communications, Inc. v. Verizon Pennsylvania, Inc. and Verizon North LLC*, Docket No. P-2011-2253650 (Order entered September 23, 2011) (*Core*); *Level 3 Communications, LLC v. Marianna & Scenery Hill Telephone Company*, Docket No. C-20028114 (Order entered August 8, 2002) (*Level 3*); *cf.* *T.W. Phillips Gas and Oil Company v. The Peoples Natural Gas Company*, 492 A.2d 776 (Pa. Cmwlth. 1985) (*T.W. Phillips*).[[5]](#footnote-5)

For example, in *Core*, the Commission held that the ALJ’s conclusion that this prong requires a finding that a petitioner will prevail in the underlying complaint is an “unreasonably strict” interpretation of Section 3.6(b). The Commission stated:

The basis for determining whether a petitioner has met this standard [a clear right to emergency relief] is whether the petitioner has raised “substantial legal questions.” *T.W. Phillips Gas and Oil v. Peoples Natural Gas*, *supra*. The inquiry into whether this standard has been met does not require a determination of the merits of the underlying controversy.

As stated above, the ALJ based her conclusion on a finding that it is “wholly uncertain” whether Core will prevail in the underlying Complaint. In our view, this interpretation of the “right to relief” standard is unreasonably strict. The outcome of litigation by its nature is nearly always uncertain. Requiring a petitioner seeking emergency relief to demonstrate, with certainty, that litigation will be resolved in its favor would be an impossible burden to meet.

*Core* at 12 (record citation omitted).

“Emergency” is defined in the Commission’s Regulations as “[a] situation which presents a clear and present danger to life or property or which is uncontested and requires action prior to the next scheduled public meeting.” 52 Pa. Code § 3.1. *Petition of Direct Energy Services, LLC for Emergency Order Approving a Retail Aggregation Bidding Program for Customers of Pike County Light & Power Company,* Docket No. P‑00062205 (Order entered April 20, 2006) (large rate increases did not constitute a clear and present danger to life or property); *Petition of National Fuel Gas Distribution Corp. for Emergency Order Granting a Temporary Waiver of Certain Tariff Rules Related to Transportation Service,* Docket Nos. P-961022 and P-961021 (Order entered March 19, 1996) (threat of depletion of gas stores in unusually cold conditions constituted a clear and present danger to life or property).

 The party seeking relief bears the burden of proving that the facts and circumstances meet all four of the requirements of 52 Pa. Code § 3.6(b). 66 Pa. C.S. § 332. The burden of proof must be carried by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the petitioner’s evidence must be more convincing, by even the smallest amount, than that presented by the other party. *Se‑Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

Additionally, any finding of fact necessary to support the Commission’s decision must be based upon substantial evidence. *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. PUC,* 623 A.2d 6 (Pa. Cmwlth. 1993). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

An order granting or denying interim emergency relief is effective immediately upon issuance by the presiding officer. A presiding officer is required to certify the grant or denial of relief to the Commission as a material question. 52 Pa. Code § 3.10(b). No stay of an order granting or denying interim emergency relief is permitted while the matter is being reviewed by the Commission. 52 Pa. Code § 3.10(a).

Within thirty days of the receipt of a certified question, the Commission is required to do one of the following:

1. Continue, revoke or grant a stay of proceedings.
2. Determine that the certification was improper and return the matter to the presiding officer for resolution.
3. Answer the certified question..

52 Pa. Code § 5.305(e). If the Commission does not act upon a certified question within thirty days of its receipt, the decision of the presiding officer will be deemed to have been affirmed. 52 Pa. Code § 5.305(f).

**B. I&E’s Petition for Emergency Relief**

**1. 52 Pa. Code § 3.6(b)(1).**

**a. ALJs’ Recommendation**

 The first requirement to receive interim emergency relief requires the petitioner to demonstrate that its right to relief is clear. 52 Pa. Code § 3.6(b)(1). As noted above, the Commission has interpreted this provision as requiring only a determination that a petition raises a substantial legal question, rather than a determination of the merits of a controversy in order to find that a petitioner’s right to relief is clear. *Core* at 8, 12; *Level 3* at 8.

 The ALJs concluded that I&E’s Petition raised a substantial legal question and adduced sufficient evidence to conclude there is a reasonable expectation of success on the merits on the underlying Complaint. *July 1st Order* at 11. According to the record evidence, neither Uber nor its drivers, who provided rides to Officer Bowser after he initiated service requests using the Uber app, hold authority from the Commission to provide transportation services. *Id.*

 The ALJs rejected Uber’s contention that it is not a broker, but a software company licensing a smartphone application to its wholly owned subsidiary Gegen, which was granted a statewide brokerage license. Uber offered no evidence to support the notion that Gegen offered any of the transportation used by Officer Bowser. Rather, the ALJs determined that the facts support I&E’s argument that Uber offered the transportation.

 Officer Bowser testified that he downloaded the Uber app on his smart phone and was required by Uber to register his credit card information with Uber and to provide an email address in order to complete the download of the Uber app. Officer Bowser testified that he then requested service, which was provided on approximately eleven occasions. After the service was provided, Officer Bowser was advised of the charge and made payment with the credit card information previously provided. He testified the invoices indicated the charge was made by Uber.

*Id.* at 12.

 As a result, the ALJs concluded that I&E satisfied its burden of proving that its right to relief is clear.

**b. Positions of the Parties**

 **(1) I&E**

In its Brief, I&E asserts that it has raised a substantial legal claim on the merits and demonstrated that its right to relief is clear. Specifically, I&E contends that it presented sufficient evidence at the hearing that Uber has not been issued a certificate of public convenience to operate as a motor carrier of passengers as required by Section 1101 of the Code, 66 Pa. C.S. § 1101, and has not been issued a license to broker transportation within Pennsylvania as required by Section 2505 of the Code, 66 Pa. C.S.
§ 2505. Moreover, I&E argues that its witness presented unrebutted testimony describing his utilization of the Uber app and how he personally obtained numerous rides provided by non-certificated Uber drivers in their personal vehicles. Further, the witness testified to being charged for each ride and his compilation of invoices for each trip was admitted into the record. Finally, the witness testified that Uber has been providing, and continues to provide, brokerage service without approval of the Commission. I&E Brief at 7-8.

In conclusion, I&E argues that the Commission should affirm the ALJs’ finding that the right to relief is clear.

(**2) Uber**

 In its Brief, Uber argues that I&E has failed to demonstrate that its right to relief is clear. With regard to the unlawful brokering allegations, Uber claims that the ALJs ignored the fact that the Commission has not determined whether the licensing of an application by Uber constitutes the brokering of transportation services under the Code. Further, Uber contends that the ALJs failed to recognize Uber’s unique services model which uses modern technology to enable the riding public to efficiently and economically connect with available drivers. Uber compares its application to Expedia in which consumers book flights and reserve hotels. Uber Brief at 9.

 Additionally, Uber argues that the General Assembly could not have envisioned the technology-driven options provided by Uber when it created the definition of “broker” under the Code; it stated the term does not clearly encompass the Uber app. However, rather than debating the applicability of the definition of “broker,” Uber contends that the Application for Emergency Temporary Authority by Rasier-PA, LLC, another wholly-owned subsidiary of Uber, filed with the Commission on July 2, 2014,[[6]](#footnote-6) (Rasier Application) will resolve this “grey area” under the Code. *Id.* at 10.

 Uber reasserts the argument that its other wholly-owned subsidiary, Gegen, holds a brokerage license issued by the Commission. *See Gegen Order, supra*. According to Uber, Gegen’s Application listed Uber as Gegen’s sole member and states that the brokerage license issued by the Commission clearly authorizes the connection of passengers and carriers using the Uber app. Further, Uber contends that Officer Bowser testified as to not being aware of any agreements between Uber and the drivers who provided the transportation. Uber argues that Officer Bowser accessed the drivers and paid for those services using the Uber app in the same way as he would use Expedia to book a flight and pay for it. Additionally, Uber states that, in its Answer to the Complaint, it specifically denied the allegation that drivers register with Uber or are otherwise affiliated with Uber.[[7]](#footnote-7) Uber Brief at 10.

 **c. Disposition**

On review, we find that I&E has demonstrated a clear right to relief under Section 3.6(b)(1) of our Regulations, based on the evidence adduced at the hearing. Historically, the Commission’s basis for determining whether a petitioner has met this standard is whether the petitioner has raised “substantial legal questions.” *T.W. Phillips*, *supra*. The inquiry into whether this standard has been met does not require a determination of the merits of the underlying controversy.

In this case, we agree with the ALJs that I&E has raised substantial legal questions that Uber: (1) meets the definition of “broker” under Section 2501(b) of the Code; (2) has not been issued a broker license but is engaging in the business of a broker in violation of Section 2505(a) of the Code; and (3) is arranging transportation with motor carriers who do not hold a certificate of public convenience in violation of Section 2505(a).

I&E’s witness provided sufficient testimony and documentary evidence to support the allegations that Uber arranged the transportation of passengers to drivers for compensation through its software. For example, Officer Bowser testified as to downloading the Uber app and being required to register his credit card information with Uber. He also received email communications and invoices from Uber that were arranged through the Uber app. All of the correspondence referred to either “Uber,” “Uber Technologies, Inc.,” or “ADY\*UBER TECHNOLOGIES.” Tr. at 18-21; Exh. 2.

Additionally, Officer Bowser testified that, to his knowledge, none of the Uber drivers who provided the rides hold certificates of public convenience from the Commission to operate as a motor carrier of passengers. Tr. at 17.

With regard to the broker license requirements, Uber failed to support its contention that Gegen offered or provided any of the transportation used by Officer Bowser. Upon further review of the record, there is no evidence that Gegen offered any of the transportation to Officer Bowser and we could locate no reference to this company in the communications or invoices. Moreover, we note that, even if it could be shown that Gegen actually offered the transportation to Officer Bowser, there was substantial evidence showing it violated Section 2505(a) of the Code by arranging transportation with motor carriers who do not hold certificates of public convenience.

As a result, we agree with the ALJs that the first prong in Section 3.6(b) is satisfied in this proceeding.

  **2. 52 Pa. Code § 3.6(b)(2)**

 **a. ALJs’ Recommendation**

 The second requirement for obtaining interim emergency relief is a demonstration by the petitioner that its need for relief is immediate. 52 Pa. Code § 3.6(b)(2). The ALJs noted I&E’s unsuccessful attempts to stop Uber from unlawfully providing brokerage service and, in doing so, unlawfully using non-certificated motor carriers. Additionally, the ALJs cited to hearing evidence that, since I&E filed its Complaint on June 5, 2014, Uber has not suspended its transportation service, but as recently as June 24, 2014, continued to offer this service without having Commission authority to do so. *July 1st Order* at 12.

 The ALJs referenced Officer Bowser’s testimony about his concerns for public safety because of the lack of information about the safety and integrity of drivers and vehicles used by Uber in its operation, and the lack of information regarding appropriate insurance coverage. According to Officer Bowser, the public is at risk if Uber continues to operate under the current circumstances.

 For these reasons, the ALJs found that I&E satisfied its burden of proving by a preponderance of the evidence that its need for relief is immediate.

**b. Positions of the Parties**

 **(1) I&E**

I&E argues that the safety of the public is being threatened and its need for relief is immediate. In addition to the testimony referenced by the ALJs, I&E emphasized the record evidence that the Commission does not inspect the vehicles of Uber drivers or review the driving history or criminal background records of the Uber drivers. I&E also contends that certificates of insurance are not being filed with the Commission and there is no verification of whether there are lapses in coverage by Uber drivers. I&E Brief at 8.

I&E claims that there are numerous Uber drivers providing multiple trips per day without Commission oversight. According to I&E, Uber is subjecting the public to potential injury or death each day that it operates without a broker license or each trip that it arranges with an un-certificated Uber driver. Because of Uber’s failure to submit to regulation prior to initiating its service, I&E argues that the Commission has been unable to prevent injuries to people or damage to property through an inspection of vehicles and a review of Uber driver records. Moreover, I&E avers that, should an accident occur, it is not clear that there would be sufficient, or even any, insurance coverage for injury and damages to persons or property caused by Uber drivers. Finally, it highlights Officer Bowser’s testimony regarding Uber’s failure to submit to Commission oversight and the impact on public safety. “We don’t know how many there are, who they are or where they are currently located.… I think it’s a recipe for disaster.” *Id.* at 8-9; Tr. at 31.

 (**2) Uber**

Uber submits that I&E has not demonstrated an immediate need for relief. Uber claims that it had no obligation to alter its operations after the filing of the Complaint on June 5, 2014, and that I&E is not the arbiter or final decision-maker as to what activity violates the Code or requires Commission authority to continue. Uber Brief at 10-11.

Furthermore, Uber argues that I&E’s initiation of multiple enforcement proceedings over a six-week period involving the same set of circumstances does not render its request for relief immediate. It claims that the complicated and novel regulatory issues raised by the use of the Uber app should not be addressed in a compressed interim emergency order proceeding but should be resolved through the normal Complaint process. Uber also argues that the Commission’s disposition of the Rasier Application involving the provision of experimental ride sharing network services is a more pressing matter for the Commission rather than the disposition of this proceeding.

 **c. Disposition**

Upon review, we shall adopt the ALJs’ finding that I&E demonstrated that its need for emergency relief is immediate, as required by 52 Pa. Code § 3.6(b)(2).

Section 501 of the Code, 66 Pa. C.S. § 501, gives the Commission broad authority to enforce the Code, to supervise public utilities doing business in Pennsylvania, and to promulgate regulations necessary to perform these duties. *Keystone Cab Service, Inc. v. Pa. PUC*, 54 A.3d 126, 128 (Pa. Cmwlth. 2012). In enacting Section 501, the General Assembly expressed the Commission’s authority as both an authorization to act and as a duty to enforce, execute and carry out the provisions of the Code.[[8]](#footnote-8) Section 1501 of the Code also requires every public utility to “maintain adequate, efficient, safe, and reasonable service and facilities” and to “make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.” 66 Pa. C.S. § 1501. Pursuant to this authority and duty to protect the public interest, the Commission promulgated regulations for motor carriers of passengers. *See* 52 Pa. Code Ch. 29.

As discussed above, there is substantial evidence that Uber engages in the brokerage business without a broker license and, in doing so, arranges for the transportation of passengers with un-certificated motor carriers. Based on the evidence adduced at the hearing, Uber has not complied with the Code. As such, the Commission has no information related to vehicle safety inspections, driver histories, criminal background checks of drivers, or insurance certifications on vehicles. We believe that failure to submit to the Commission’s oversight and the lack of information related to the Uber drivers and their vehicles constitutes an immediate safety risk for the general public.

For these reasons, the second prong to obtain emergency relief has been met in this case.

 **3. 52 Pa. Code § 3.6(b)(3)**

 **a. ALJs’ Recommendation**

The third requirement for obtaining interim emergency relief is a demonstration by a petitioner that the injury would be irreparable if relief is not granted. 52 Pa. Code § 3.6(b)(3). The ALJs found that the evidence presented at the hearing establishes that there is no Commission oversight of Uber drivers and no inspection of the private vehicles providing transportation services. Further, the ALJs noted that the Commission has no knowledge whether the Uber vehicles are insured, how often they are inspected, and has no information regarding driver histories, policies regarding drivers, criminal records and driving records. Under these circumstances, the ALJs concluded that the Commission cannot currently determine that the vehicles arranged by Uber comply with its safety requirements nor that the drivers possess the requisite qualifications to maintain the public safety. According to the ALJs, the “occurrence of a fatal or injurious motor vehicle accident, which could be avoided with appropriate Commission oversight, could be catastrophic.” *July 1st Order* at 14.

Additionally, the ALJs concluded that the Commission cannot accurately verify the existence of adequate insurance coverage for riders using the Uber service in order to ensure public safety. A fatal or injurious motor vehicle accident occurring without adequate insurance coverage would also be catastrophic. *Id.*

 As a result, the ALJs found that I&E established by a preponderance of the evidence that the harm would be irreparable if the requested relief were not granted. *Id.*

 **b. Positions of the Parties**

 **(1) I&E**

I&E states that a violation of law constitutes irreparable harm *per se*, citing to *Pa. PUC v. Israel*, 356 Pa. 400, 52 A.2d 317 (1947). It argues that the record shows Uber as operating unlawfully by brokering transportation service for compensation using non-certificated drivers. Because Uber presented no evidence or testimony to the contrary, I&E claims that it has established that Uber’s actions constitute irreparable harm as a matter of law. I&E Brief at 10.

 (**2) Uber**

Uber makes various arguments challenging the ALJs’ finding related to irreparable harm. First, it argues that I&E provided no examples of regulatory violations by Uber drivers related to driver integrity, vehicle safety or liability insurance. Uber Brief at 12.

Second, Uber argues that it is improper for the Commission to use injunctive relief without a full adjudication of the underlying proceeding in circumstances involving possible future harm or accidents. *Id.*

Third, Uber states that certificated carriers are required to follow the same annual inspection requirements of all motor vehicles operated in Pennsylvania. It contends that the Commission’s inspection process occurs randomly and certificated carriers depart from vehicle safety requirements for periods of time before I&E is aware of such departures. Uber concludes that the Commission’s inspection of vehicles does not provide any certainty that its requirements are followed or that accidents will not occur. *Id.*

Fourth, Uber claims that the Commission’s monitoring of driver records occurring every one to two years is sporadic and provides no certainty of compliance or that accidents will not occur. *Id.* at 12-13.

Fifth, Uber contends that insurance requirements relate to financial responsibility and have nothing to do with public safety. *Id.* at 13.

Sixth, Uber states that, in its Answer, it referred to the commitments made in the Rasier Application regarding its intended compliance with the Commission’s requirements for vehicle safety, driver integrity and liability insurance. According to Uber, the commitments to safe standards in the Rasier Application will exceed the Commission’s Regulations. *Id.*

Lastly, Uber argues that a finding of irreparable harm *per se* in this matter is impermissible because there has been no conclusion or determination by the Commission that the alleged conduct was unlawful. *Id.* at 14.

 **c. Disposition**

 Upon review, we find that I&E has met its burden under Section 3.6(b)(3) of our Regulations that there would be irreparable harm unless emergency relief is granted. We agree with the ALJs’ conclusions that the Commission cannot currently determine that the vehicles arranged by Uber comply with regulatory safety requirements nor that the drivers possess the requisite qualifications to maintain the public safety. Additionally, we have no measure of whether riders using the Uber service are protected by adequate insurance coverage. Uber’s refusal to submit to the Commission’s oversight is preventing the Commission from enforcing the safety regulations pertaining to motor carriers and from helping to prevent possibly catastrophic accidents involving injury or death.

 Uber is essentially arguing that, if the Commission’s Regulations do not guarantee the safety of the public or otherwise ensure the prevention of accidents, that they are not necessary for public safety. Such an argument is entirely without merit. The Commission is not charged with the impossible task of preventing all motor carrier accidents or injuries. Rather, our responsibility and duty under Sections 501 and 1501 of the Code is to help protect the public interest. We have broad authority to act in this regard and have promulgated Chapter 29 of our Regulations to carry out this mandate. Uber has refused to submit to our Regulations which we believe would be injurious to the public and potentially compromise the safety of passengers and pedestrians if permitted to continue during the pendency of the Complaint proceeding.

For the above reasons, the third prong to obtain emergency relief has been met in this case.[[9]](#footnote-9)

 **4. 52 Pa. Code § 3.6(b)(4)**

 **a. ALJ’s Recommendation**

 The fourth requirement for obtaining interim emergency relief is a demonstration by a petitioner that the relief requested would not be injurious to the public interest. 52 Pa. Code § 3.6(b)(4).

The ALJs explained that it is not in the public interest for the Commission to ignore the statutory mandate to oversee brokers and motor carriers and to neglect the enforcement of regulations designed to safeguard the public and protect against preventable accidents and injuries. Accordingly, the ALJs concluded that it is not in the public interest to permit Uber to continue its contested service, pending a full and complete hearing and providing all parties with a fair opportunity to be heard. Thus, the ALJs determined that I&E established by a preponderance of the evidence that the relief requested is not injurious to the public interest. *July 1st Order* at 15.

 **b. Positions of the Parties**

1. **I&E**

 I&E argues that the safety of the public requires the requested relief. According to I&E, Uber has no lawful right to broker transportation for compensation in Pennsylvania. Additionally, Uber has no lawful right to use non-certificated drivers to provide such transportation. I&E asserts that, until Uber is granted the appropriate authority to operate, the Commission is unable to guarantee that Uber is abiding by the Commission’s motor carrier and insurance regulation which were designed to safeguard the public. Thus, I&E agrees with the ALJs’ finding that it is not in the public interest for the Commission to ignore the Commission’s statutory mandate pertaining to motor carrier safety. I&E Brief at 10-11.

 **(2) Uber**

Uber argues that, if the Commission grants the requested relief, it will be taking the unprecedented step of ordering a software company to stop licensing the Uber app, prior to conducting the necessary review of whether any activities violate the Code. Such action, Uber contends, would be injurious to the public interest by denying access to a service that connects drivers to riders in Allegheny County, where existing transportation options fail to meet the needs of riders. Additionally, Uber states that the injunctive relief will deprive drivers of a small business opportunity and adversely affect economic growth in Allegheny County. Uber Brief at 14-15.

 **c. Disposition**

 We find that I&E has met its burden under Section 3.6(b)(4) of our Regulations that the emergency relief will not be injurious to the public interest.

As we have previously discussed, the public interest is an amorphous concept that may be applied where public policy is clearly better served by one course of action than another. *See Petition of Service Electric Company, LLC for Interim Emergency Order*, Docket No. P-2013-2349801 (Order entered April 4, 2013) at 37. Here, we conclude that the public interest is better served by enforcing the Code and helping to ensure the safety of the public. Although the granting of emergency relief during the pendency of the proceeding may result in the limitation of options for some riders in Allegheny County and may impact the business interests of Uber and its drivers, such considerations do not outweigh the higher goal of public safety. Under the delegated authority of the General Assembly, we have the responsibility, and the public expects, that we will work to ensure that the travelling public is transported safely. As the ALJs correctly noted in the Order on Interim Emergency Relief involving Lyft, Inc., the “public has a compelling interest in compliance with the law and the Commission has an unassailable duty to ensure compliance with the … Code.” *Petition of the Bureau of Investigation and Enforcement for an Interim Emergency Order requiring Lyft, Inc. to immediately cease and desist from brokering transportation service for compensation between points in Pennsylvania*, Docket No. P-2014-2426847 (Order entered July 1, 2014) at 12.

For these reasons, the fourth prong to obtain emergency relief has been met in this case.

**C. Remedy**

The ALJs ordered Uber to “immediately cease and desist from utilizing its digital platform to facilitate transportation of passengers utilizing non-certificated drivers in their personal vehicles *until such time as it secures appropriate authority from the Commission*.” *July 1st Order* at 16 (emphasis added). We recognize the possibility that, after a full hearing in the underlying Complaint proceeding, Uber might prevail and the Complaint against it could be dismissed. Therefore, the time qualifier for the cease and desist order should be clarified to account for this possibility. Accordingly, the cease and desist order will be lifted by operation of law if the allegations in the underlying Complaint are not proven.

 We are mindful that Uber’s wholly-owned subsidiary Rasier has several applications, which are currently pending before the Commission (Docket Nos.
A-2014-2416127, A-2014-2424608 and A-2014-2429993). In the event any of the Rasier applications are approved, the cease and desist Order herein will be lifted upon full compliance with the requirements set forth in any Order approving such Rasier application, with respect to (a) the parties or entities permitted to operate in that Order, and (b) the geographic scope of the authority to operate set forth in that Order. Any determination approving a Rasier application will have no bearing on the pending enforcement actions in this proceeding. In the event all Rasier Applications are rejected, the cease and desist Order herein shall remain in force consistent with this Opinion and Order.

**IV. Conclusion**

 Consistent with the foregoing discussion, we conclude that I&E has met the requirements set forth at 52 Pa. Code § 3.6(b), and carried its burden of demonstrating its right to interim emergency relief; **THEREFORE,**

 **IT IS ORDERED:**

 1. That the Material Question certified to the Commission on July 1, 2014, by Order of Administrative Law Judges Mary D. Long and Jeffrey A. Watson as to whether the Bureau of Investigation and Enforcement has met the requirements for obtaining interim emergency relief set forth at 52 Pa. Code § 3.6(b) is answered in the affirmative.

 2. That the Petition for Interim Emergency Order filed by the Bureau of Investigation and Enforcement is granted consistent with this Opinion and Order.

3. That Uber Technologies, Inc., shall immediately cease and desist from utilizing its digital platform to facilitate transportation of passengers utilizing non-certificated drivers in their personal vehicles until such time that: (a) it secures appropriate authority from the Commission and Uber Technologies, Inc., has satisfied the compliance requirements of such authorization; or (b) the Complaint at Docket No.

C-2014-2422723 is dismissed by a final and unappealable Order.

 4. That if the Commission approves any application of Rasier-PA LLC, a Wholly Owned Subsidiary of Uber Technologies, Inc., including the Application For Emergency Temporary Authority to Operate An Experimental Ride-Sharing Network Service Between Points in Allegheny County, PA, Docket No. A-2014-2429993, the cease and desist Order herein will be lifted upon full compliance with the requirements set forth in any Order approving such Rasier application, with respect to (a) the parties or entities permitted to operate in that Order, and (b) the geographic scope of the authority to operate set forth in that Order.

 **BY THE COMMISSION,**

 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: July 24, 2014

ORDER ENTERED: July 24, 2014

1. The Commission docketed the Complaint at C-2014-2422723. [↑](#footnote-ref-1)
2. A “broker” is defined as:

Any person or corporation not included in the term “motor carrier” and not a bona fide employee or agent of any such carrier, or group of such carriers, who or which, as principal or agent, sells or offers for sale any transportation by a motor carrier, or in the furnishing, providing, or procuring of facilities therefor, or negotiates for, or holds out by solicitation, advertisement, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation, or the furnishing, providing or procuring of facilities therefor, other than as a motor carrier directly or jointly, or by arrangement with another motor carrier, and who does not assume custody as a carrier.

66 Pa. C.S. § 2501(b). [↑](#footnote-ref-2)
3. *See Application of Gegen, LLC for a Brokerage License*, Docket No.
A-2012-2317300 (Order entered January 24, 2013) (*Gegen Order*). [↑](#footnote-ref-3)
4. Pursuant to 52 Pa. Code § 3.10(a), the *July 1st Order* became effective upon issuance and remains in effect at this time. [↑](#footnote-ref-4)
5. In reviewing the issuance of an injunction, the Commonwealth Court held that the moving party was not required to demonstrate its absolute right to relief on the underlying claim where the other elements for injunctive relief were satisfied. The Court held that “. . . *if the other elements of a preliminary injunction are present*, and the underlying claim raises important legal questions, the plaintiff’s right to relief is clear.” *T.W. Phillips* at 781 (emphasis supplied). [↑](#footnote-ref-5)
6. Docket No. A-2014-2429993. [↑](#footnote-ref-6)
7. Uber did not present any testimony or evidence related to its averment that the drivers did not register with Uber and were not affiliated with Uber. [↑](#footnote-ref-7)
8. Section 501 provides in relevant part: “In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders or otherwise, all and singular, the provisions of this part, and the full intent thereof….” 66 Pa. C.S. § 501. [↑](#footnote-ref-8)
9. As this proceeding involves a petition for an interim emergency order, we do not conclude that Uber has committed a violation of the Code. Such a determination would require I&E to successfully prove its Complaint in the underlying proceeding at

C-2014-2422723. Accordingly, we make no finding that Uber’s actions constitute irreparable harm *per se*. *See Pa. PUC v. Israel, supra.* [↑](#footnote-ref-9)